IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 207 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MER SAVDAS MERAG MODHVADIYA

Versus

STATE OF GUJARAT

Appearance:

DHARMESH D NANAVATY for Petitioner

MR KT DAVE, APP for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 28/04/2000

ORAL JUDGEMENT

#. Sub Divisional Magistrate, Porbandar, issued a notice under section 59 of the Bombay Police Act ("the Act" for short) on the externee - Mer Savdas Merag Modhvadiya, calling upon him to show cause as to why he should not be externed from Porbandar as well as from the contiguous

districts in order to prevent him from pursuing his nefarious activities. The Sub-Divisional Magistrate also referred to 5 offences registered against the petitioner. After conducting an inquiry (externment proceedings) in light of the reply given by the petitioner and on the basis of the material produced, the Sub - Divisional magistrate passed an order on June 17, 1999 in exercise of powers under section 56(b) of the Act, externing the petitioner for a period of two years from the areas of districts of Porbandar, Junagadh, Jamnagar, Rajkot City and Rajkot (Rural).

#. The said order was carried in appeal contemplated under section 60 of the Bombay Police Act and that also came to be rejected by an order dated September 4, 2000. The petitioner therefore, challenges the order of externment as well as the order of appellate authority on various grounds. Mr. Dharmesh Nanavaty, learned advocate appearing for the petitioner has restricted his arguments to the fact that the externing authority has not assigned any reasons for externing the externee from contiguous districts. He also submitted that none of the cases fall under Chapters XII, XVI and XVII of the Indian Penal Code. According to Mr. Nanavaty, therefore, there is non-application of mind on the part of the externing authority.

#. The petition is opposed to by Mr. K.T. Dave, learned APP.

#. Having regard to the rival side contentions, there is substance in the contention raised by Mr. Nanavaty on behalf of the petitioner. Plain reading of the order of externment indicates that the externing authority has not assigned any reasons for externing the petitioner from contiguous districts. Even in the notice under section 59 of the Act, what is stated is that it is proposed to extern the petitioner from contiguous districts as he may operate from those districts in these days of speedy transport. The only reason that is assigned is that in these days of speedy transport, the petitioner may operate from a nearby place. But there appears nothing to support this apprehension of the externing authority. In the absence of such material, externing the petitioner from the contiguous districts is bad and the order, therefore, cannot be sustained. In this regard, the decisions in the case of Mustafamiya Pirsahedmiya Saiyed v. State of Gujarat and anr., 1999 (1) GLH 913 and in the case of Sandhi Mamad Kala v. State of Gujarat, 14 GLR 384, may be taken into consideration.

#. In view of the above discussion, the petition deserves to be allowed. The same is allowed. The impugned orders of externment dated June 17, 1999 as also the appellate order dated September 4, 1999 are hereby quashed and set aside. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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pirzada/-